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FIREMAN'S FUND INSURANCE COMPANY,  
a foreign corporation a/s/o BASIC RESOURCES, INC.  
and GEORGE REED, INC., a foreign corporation

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

FIREMAN'S FUND INSURANCE  
COMPANY, a foreign corporation  
a/s/o BASIC RESOURCES, INC.  
and GEORGE REED, INC., a foreign  
corporation,

Plaintiff,

vs.

GERLING AMERICA INSURANCE  
COMPANY, a foreign corporation,

Defendant.

CASE NO. C 07 06302 CRB

**PLAINTIFF'S STATEMENT OF RECENT  
DECISION SUBMITTED IN SUPPORT OF  
MOTION FOR FINAL SUMMARY  
JUDGMENT [D.E. 58] [F.R.C.P. 56, CIVIL  
L.R. – 7.3. (d)]**

**Hearing Date: August 8, 2008  
Time: 10:00 a.m.  
Courtroom: 8**

**TO: THE HONORABLE COURT AND TO DEFENDANT AND COUNSEL OF RECORD:**

**COMES NOW**, Plaintiff, FIREMAN'S FUND INSURANCE COMPANY a/s/o BASIC  
RESOURCES, INC. and GEORGE REED, INC., ("FFIC") by and through undersigned counsel and  
pursuant to Fed.R.Civ.P. 56, Civil L. R. 7-3 (d), respectfully files/serves this Statement of Recent  
Decision of Colony Insurance Company vs. Mix Brothers Tank Service, Inc., 2008 U.S. Dist.

**PLAINTIFF'S STATEMENT OF RECENT DECISION SUBMITTED IN SUPPORT OF MOTION FOR  
FINAL SUMMARY JUDGMENT [D.E. 58] [F.R.C.P. 56, CIVIL L.R. – 7.3. (d)]**

1 LEXIS 42652 (E.D. La. May 29, 2008), submitted in support of FFIC's Motion for Final Summary  
2 Judgment set for hearing Friday, August 8, 2008 at 10:00 a.m..

3 The undersigned counsel does not know when this Recent Decision entered the "LEXIS"  
4 research system but the undersigned counsel's continual, extensive research only found this Recent  
5 Decision on LEXIS on Thursday, July 31, 2008, which quite possibly could be the first date this  
6 Recent Decision entered the LEXIS system. Although, this Recent Decision was decided on May  
7 29, 2008 and filed May 30, 2008, it is yet to be "published." It appears, though, that this Recent  
8 Decision shall, indeed, be "published" since the Court did not designate the Recent Decision as  
9 "unpublished", not to be cited as legal authority or precedent. A copy of this Recent Decision is  
10 attached hereto as Exhibit "A", pursuant to Civil L.R. 7-3 (d).  
11

12  
13 DATED 1st day of August 2008.

14  
15  
16 By:



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28

**PROOF OF SERVICE**

*Fireman's Fund Ins. Co. v. Gerling American Ins.*

United States District Court, Northern District of California

Case No.: C 07 06302 CRB

I am employed in the City and County of West Palm Beach, State of Florida. I am over the age of 18 and not a party to the within action; my business address is: Derrevere, Hawkes & Black, 470 Columbia Drive, Building "B", West Palm Beach, Florida 33409.

On August 1st, 2008, I served the foregoing document(s) described as:

**PLAINTIFF'S STATEMENT OF RECENT DECISION SUBMITTED IN SUPPORT OF  
MOTION FOR FINAL SUMMARY JUDGMENT [D.E. 58] [F.R.C.P. 56, CIVIL L.R. – 7.3.  
(d)]**

On the interested parties in this action by placing [ ] the original [ X ] a true copy thereof enclosed in a sealed enveloped addressed as stated below:

**[ ] BY REGULAR MAIL:**

I caused such envelopes to be deposited in the United States Mail at West Palm Beach, Florida with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service each day and that practice was followed in the ordinary course of business for the service herein attested to.

**[X] BY ECF:**

I HEREBY CERTIFY that on this 1st day of August, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on: TINO X. DO, Barger & Wolen, LLP, 650 California Street, 9<sup>th</sup> Floor, San Francisco, CA 94108, tdo@barwol.com and CHARLES K. BRUNN, Brunn & Flynn, 928 12<sup>th</sup> Street, Suite 200, P.O. Box 3366, Modesto, CA 95354, CBrunn@Brunn-Flynn.com via transmission of Notices of Electronic Filing generated by CM/ECF.

**[X] FEDERAL** - I declare that I am employed in the office of a member of the Florida Bar, admitted to practice in all Florida Courts and who makes this Pro Hac Vice Application, that our co-counsel and sponsor is a member of the bar of this California Court, and at their direction this service was made. Executed at West Palm Beach, Florida on August 1st, 2008.

NAME: Deanna N. Menendez

Signature:

